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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/539,096	03/30/2000	Joseph F. Fitzpatrick	7175/60314	7874

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EXAMINER

MARMOR II, CHARLES ALAN

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/539,096

Applicant(s)

FITZPATRICK ET AL.

Examiner

Charles A. Marmor, II

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Reissue Applications

1. This application is objected to under 37 CFR 1.172(a) as lacking the written consent of all assignees owning an undivided interest in the patent. The consent of the assignee must be in compliance with 37 CFR 1.172. See MPEP § 1410.01. The consent of the assignee is objected to because the assignee providing the consent of March 30, 2000 does not appear to be the current assignee of record.

A proper assent of the assignee in compliance with 37 CFR 1.172 and 3.73 is required in reply to this Office action. See MPEP § 1410.01 for the preferred format of the consent of the assignee.

2. The reissue oath/declaration filed with this application is defective because it fails to contain a statement that *all errors* which are being corrected in the reissue application up to the time of filing of the oath/declaration arose without any deceptive intention on the part of the applicant. See 37 CFR 1.175 and MPEP § 1414. The reissue declaration fails to indicate the residence and mailing address for each inventor. An address is provided for each inventor; however, the Declaration fails to indicate what these addresses represent.

3. Claims 1-34 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

Specification

4. The disclosure is objected to because of the following informalities:
 - a. The format of the amendments to the specification filed March 30, 2000 do not conform to current reissue practice. As such, the specification is objected to because the intended changes are vague and ambiguous.
 - b. At page 1, line 9 of the last full paragraph, "skim" apparently should read --skin--.
 - c. At page 5, line 19 of the first full paragraph, "of" (second occurrence) should be deleted.

Appropriate correction is required.

Claim Objections

5. Claim 1 is objected to because of the following informalities: at line 8, "contact." apparently should read --contact;--. Appropriate correction is required.
6. Claim 9 is objected to because of the following informalities: at line 3, "is" apparently should read --in--. Appropriate correction is required.
7. Claims 10, 12, 14 and 16 are objected to because of the following informalities: at line 1, --measuring-- apparently should read "apparatus". Appropriate correction is required.

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8. Claim 17 is objected to because of the following informalities:

a. At line 6, "first and second" apparently should read --two spaced-- in order to maintain consistent terminology with the antecedent.

b. At line 7, "sensor" apparently should read --sensors--.

Appropriate correction is required.

9. Claim 19 is objected to because of the following informalities: at lines 1 and 2, "first and second" apparently should read --two spaced-- in order to maintain consistent terminology with the antecedent. Appropriate correction is required.

10. Claim 20 is objected to because of the following informalities: at lines 1-2, "first and second" apparently should read --two spaced-- in order to maintain consistent terminology with the antecedent. Appropriate correction is required.

11. Claim 23 is objected to because of the following informalities: at line 3, "exceed" apparently should read --exceeds--. Appropriate correction is required.

12. Claim 29 is objected to because of the following informalities: at line 8, "he" apparently should read --the--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

13. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

14. Claims 22 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 22 and 23 recite the limitations “the first temperature signal” and “the second temperature signal” in lines 1 and 2. There is insufficient antecedent basis for these limitations in the claims. There are no *temperature* signals recited in claims 21-23 prior to these recitations.

Claim Rejections - 35 USC § 102

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

16. Claims 1, 2, 5, 6, 9, 11, 13, 15 and 21-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Koch ('529). Koch teaches a method and apparatus for monitoring body functions, specifically skin temperature. The apparatus includes a housing (2) and first and second temperature sensors (5,6) received by and spaced apart in the housing in proximity to each other and adapted for contact with generally the same area of skin on an infant. The first and second temperature sensors (5,6) generate first and second temperature (body function) signals. A circuit (12) is coupled to the first sensor and the second sensor and processes and

compares the temperature (body function) signals. A plurality of indicators (13,14,17,18,21) are provided that communicate with the circuit (12). A first indicator (13,14) is capable of providing an indication of the temperature or rate of change in temperature sensed by the first and second sensors. A second indicator (14) is capable of providing an indication of the difference between the sensed signals. Additional indicators (17,18,21) are provided that are capable of providing an indication when a difference between the sensed signals exceed a predetermined threshold that may indicate a difference in the proximity of a sensor to the skin, failure of a sensor, or measurement error.

17. Claims 17-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Stillman et al. ('149). Stillman et al. teach a method and apparatus for monitoring body functions, and is capable of providing an indication of temperature at a skin surface. The apparatus includes a housing (10') mounted by first and second temperature sensors (18,22) spaced apart in the housing in proximity to each other and adapted for contact with generally the same area of skin on a subject. The first and second temperature sensors (18,22) generate first and second temperature signals. A circuit is coupled to the first sensor and the second sensor and processes and compares the temperature signals. A plurality of indicators are provided at a computer (40) that communicate with the circuit. A first indicator is capable of providing an indication of the temperature or rate of change in temperature sensed by at least one of the first and second sensors. A second indicator is capable of providing when an error signal when the difference between the sensed signals exceed a predetermined threshold.

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Allowable Subject Matter


18. Claims 3, 4, 7, 8, 10, 12, 14, 16 and 31-34 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims, and a new Declaration and Consent of Assignee were submitted to overcome the defects and objections set forth in this Office action.

Conclusion

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Marmor, II whose telephone number is (571) 272-4730. The examiner can normally be reached on M-TH (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Charles A. Marmor, II
Primary Examiner
Art Unit 3736

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September 29, 2005